

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Sonia Landino	Team: Squad #15	CCRB Case #: 201407703	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input checked="" type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Saturday, 07/26/2014 6:30 PM	Location of Incident: East 213th Street	Precinct: 47	18 Mo. SOL 1/26/2016	EO SOL 1/26/2016	
Date/Time CV Reported Sat, 07/26/2014 8:30 PM	CV Reported At: Precinct	How CV Reported: In-person	Date/Time Received at CCRB Wed, 07/30/2014 10:04 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM David Sammarco	21076	937471	047 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Whelan	27703	948440	047 PCT
2. POM Kevin Mockel	21947	947261	047 PCT
3. POM Joseph Timarchi	27993	937630	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM David Sammarco	Discourtesy: PO David Sammarco spoke rudely to § 87(2)(b)	
B.POM David Sammarco	Off. Language: PO David Sammarco made remarks to § 87(2)(b) based upon ethnicity.	
C.POM David Sammarco	Discourtesy: PO David Sammarco acted rudely toward § 87(2)(b)	

Case Summary

On July 26, 2014, at approximately 6:30 p.m., § 87(2)(b) was driving his disabled friend § 87(2)(b) (last name unknown) to his home when they saw an unidentified friend on the side of the road. § 87(2)(b) double-parked his vehicle on East 213th Street, which is a one-way street, in the Bronx. All of a sudden, an unmarked Ford sedan, operated by PO David Sammarco of the 47th Precinct, pulled up behind § 87(2)(b)'s vehicle with lights and sirens on. PO Sammarco exited the unmarked Ford sedan, approached § 87(2)(b)'s driver-side window, and allegedly told § 87(2)(b) "Move your fucking car. I hate these fucking Jamaicans" (**Allegation A and Allegation B**). PO Sammarco returned to the unmarked Ford sedan and § 87(2)(b) began to reverse his vehicle in order to move out of his parking spot. While § 87(2)(b) was attempting to move his vehicle out of the parking spot, PO Sammarco walked up to § 87(2)(b)'s driver-side window a second time and allegedly stated, "Give me your fucking license" (**within Allegation A**). § 87(2)(b) provided his Georgia state driver's license and PO Sammarco allegedly told him, "Don't you fucking move from there" (**within Allegation A**). PO Sammarco returned to the unmarked Ford sedan and began to drive away.

As soon as PO Sammarco began to drive away from the incident location, § 87(2)(b) observed additional officers inside the unmarked Ford sedan, which the investigation identified as PO Kevin Mockel and PO Joseph Timarchi of the 47th Precinct. § 87(2)(b) drove after the unmarked Ford sedan and as the unmarked Ford sedan approached the intersection of East 213th Street and Paulding Avenue in the Bronx, § 87(2)(b) observed PO Sammarco throw an object out of the driver-side window (**Allegation C**). Once § 87(2)(b) arrived at the aforementioned intersection, he saw his § 87(2)(b) state driver's license on ground, which he took a photograph of (see Board Review 01). § 87(2)(b) observed the unmarked Ford sedan parked a few feet away in front of 759 East 213rd Street, so § 87(2)(b) walked to the unmarked Ford sedan and photographed its license plate, § 87(2)(e), § 87(2)(f) (see Board Review 02). § 87(2)(b) returned to his vehicle and drove to the 47th Precinct stationhouse. § 87(2)(b) was not summonsed in regards to this incident.

Once at the 47th Precinct stationhouse, § 87(2)(b) filed a civilian complaint with Sgt. Wilson Lema (see Board Review 03). Thereafter, Sgt. Lema reported § 87(2)(b)'s complaint via telephone with the Internal Affairs Bureau, generating IAB Log No. 2014-1828 (see Board Review 04). That same day, § 87(2)(b) mailed his civilian complaint form and photographs to the CCRB via the United States Postal Service. The complaint was received at the CCRB on July 30, 2014.

This case was originally assigned to Inv. Stephanie Mleczkowski on August 12, 2014, and was reassigned to the undersigned investigator on December 8, 2014.

Mediation, Civil, and Criminal Histories

- § 87(2)(b) accepted mediation during his CCRB interview that was conducted on August 11, 2014. After the undersigned identified and interviewed the subject and witness officers, the case was forwarded to the Alternative Dispute Resolution Unit

on May 29, 2015. PO Sammarco rejected mediation on July 15, 2015 (see Board Review 16) and the case was returned to the undersigned on July 16, 2015.

- As of June 3, 2015, § 87(2)(b) has not filed a Notice of Claim with the New York City Office of the Comptroller in regards to the incident (see Board Review 17).
- § 87(2)(b) does not have any prior arrests or criminal convictions.

Officer and Civilian CCRB Histories

- PO Sammarco has been a member of the service for 10 years and has 41 CCRB allegations, none of which have been substantiated. The various allegations against him do reflect a fact pattern relevant to this case. Of the 41 CCRB allegations against him, ten are for discourteous words, one for discourteous gesture, one for discourteous action, one for offensive language regarding sex, and two for offensive language regarding race. All 12 discourtesies and offensive language allegations were closed as complainant uncooperative or unsubstantiated (see Board Review 05).
- This is § 87(2)(b)'s first CCRB complaint (see Board Review 06).

Potential Issues

- § 87(2)(b) stated that his friend § 87(2)(b) was inside his vehicle and witnessed his interaction with PO Sammarco. The unidentified individual that § 87(2)(b) had stopped his vehicle in order to speak to was either near § 87(2)(b)'s vehicle or across the street and witnessed the incident. Throughout the investigation, § 87(2)(b) was asked multiple times for his friend § 87(2)(b) and the unidentified individual's contact information, but § 87(2)(b) never provided the requested information. As such, the investigation does not have any witness statements to corroborate or contradict § 87(2)(b)'s allegations.

Findings and Recommendations

Allegation A – Discourtesy: PO David Sammarco spoke rudely to § 87(2)(b)

Allegation B – Offensive Language: PO David Sammarco made remarks to § 87(2)(b) based upon ethnicity.

Allegation C – Discourtesy: PO David Sammarco acted rudely toward § 87(2)(b)

In § 87(2)(b)'s initial complaint that he filed at the 47th Precinct stationhouse right after the incident (see Board Review 03), he admitted that he had stopped his vehicle in the middle of the road and that his vehicle was not all the way to the right side of the road. § 87(2)(b) indicated that there was a large police presence in the vicinity of East 213th Street and Holland Avenue, but did not indicate what had happened. § 87(2)(b) stated that an unmarked vehicle pulled up behind him with sirens on and the operator of the unmarked Ford sedan, identified via the investigation as PO Sammarco, approached his vehicle and told him to move his car. § 87(2)(b) attempted to move his vehicle, but he was unable to do so quickly because another vehicle was parked in front of him and the unmarked Ford sedan was parked behind him. PO Sammarco returned to § 87(2)(b)'s vehicle, banged on the window, told § 87(2)(b) a second time to move, and returned to the unmarked vehicle. As § 87(2)(b) was attempting to maneuver out of his parallel parking spot between the two vehicles, PO Sammarco approached § 87(2)(b)'s vehicle a third time, banged on his window, and requested § 87(2)(b)'s driver's license. PO Sammarco returned to the unmarked

Ford sedan with § 87(2)(b)'s driver's license and drove away. As PO Sammarco drove past § 87(2)(b)'s vehicle, he threw § 87(2)(b)'s driver's license out of the unmarked Ford sedan's driver-side window and said, "I hate these fucking Jamaicans." § 87(2)(b) exited his vehicle and took a photograph of his license on the ground and then took a photograph of the unmarked Ford sedan's license plate. The narrative within the IAB Log reiterates § 87(2)(b)'s complaint (see Board Review 04).

During § 87(2)(b)'s phone statement that he provided on August 1, 2014 (see Board Review 07), § 87(2)(g) he alleged two additional discourtesies against PO Sammarco and changed the timing of when the discourtesies were stated. When § 87(2)(b) parked his vehicle on the right side of East 213th Street in the Bronx, he noticed that there was police activity up the street. Thereafter, an unmarked Ford sedan pulled up behind § 87(2)(b)'s vehicle. When PO Sammarco approached § 87(2)(b)'s vehicle the first time, he told § 87(2)(b) to, "Move your fucking car" and then returned to the unmarked Ford sedan. § 87(2)(b) tried to maneuver out of his parking spot, but he was unable to do so. When PO Sammarco approached § 87(2)(b)'s vehicle the second time, he told § 87(2)(b) "Give me your fucking license." As PO Sammarco was walking back to the unmarked Ford sedan with § 87(2)(b)'s driver's license, § 87(2)(b) heard PO Sammarco say, "I hate these fucking Jamaicans." When PO Sammarco drove away, § 87(2)(b) saw him throw the driver's license out of his driver's side window. He then photographed his driver's license on the ground and also photographed the unmarked Ford sedan's license plate.

In § 87(2)(b)'s CCRB interview that was conducted on August 11, 2014, he stated that when he double parked his vehicle on East 213th Street, he noticed a commotion on Holland Avenue and that many police vehicles were present at the location. Thereafter, an unmarked Ford sedan pulled up behind § 87(2)(b)'s vehicle. When PO Sammarco approached § 87(2)(b)'s vehicle the first time, PO Sammarco banged on his window and told him, "Move your fucking car, I hate these Jamaicans." § 87(2)(b) attempted to quickly reverse out of his parallel parking spot, but he was unable to do so because he was in between two vehicles. When PO Sammarco approached § 87(2)(b)'s vehicle a second time, he told § 87(2)(b) "Give me your fucking license." Once § 87(2)(b) provided his driver's license, PO Sammarco told him, "Don't you fucking move from there." PO Sammarco returned to the unmarked Ford sedan, drove off, and threw § 87(2)(b)'s driver's license out of the unmarked Ford sedan's driver-side window. § 87(2)(b) drove to the intersection where he saw PO Sammarco throw out his driver's license and § 87(2)(b) photographed his driver's license on the ground. He then walked to where the unmarked Ford sedan was parked and photographed its license plate.

On the incident date, PO Sammarco was partnered with PO Mockel and PO Timarchi and was the operator of an unmarked Ford Focus. During his CCRB interview that was conducted on April 17, 2015, PO Sammarco stated that he had received a radio transmission requesting additional units. While driving to the incident location, PO Sammarco was forced to stop behind § 87(2)(b)'s vehicle because § 87(2)(b)'s vehicle was parked in the middle of the one-way street and did not allow enough room for the unmarked Ford sedan to pass by. PO Sammarco used the vehicle's horn, lights, and sirens, but § 87(2)(b) did not move his vehicle. After waiting several minutes of waiting for § 87(2)(b) to move his vehicle and not doing so, PO Sammarco exited the unmarked Ford sedan and approached § 87(2)(b)'s driver-side window. § 87(2)(b) told PO Sammarco that he was waiting for someone and PO Sammarco replied that officers needed assistance down the street. PO Sammarco could not reiterate § 87(2)(b)'s exact response, but described § 87(2)(b)'s response as being similar to "go fuck yourself. I don't care if an officer gets hurt." PO Sammarco

initially stated that he did not provide § 87(2)(b) with a response, but later amended his statement to indicate that he probably had raised his voice at § 87(2)(b) because he was aggravated that § 87(2)(b) acted like he was the most important person and seemed to “not give a shit” about blocking vehicular traffic or that officers needed help, but PO Sammarco did not specify his response to § 87(2)(b) while his voice was raised. After his conversation with § 87(2)(b) PO Sammarco returned to the unmarked Ford Focus, § 87(2)(b) moved his vehicle, and PO Sammarco drove away. PO Sammarco did not recall asking for § 87(2)(b) s driver’s license, did not recall using profanity against § 87(2)(b) denied saying anything regarding § 87(2)(b) s ethnicity, and denied throwing § 87(2)(b) s driver’s license out of the unmarked Ford Focus’ window. PO Sammarco did not recall if PO Mockel and PO Timarchi had exited the unmarked Ford Focus at any point, but he did not believe they had interacted with § 87(2)(b) at all during the incident.

PO Mockel corroborated PO Sammarco’s statement that while responding to a radio transmission requesting additional units at East 213th Street and Barnes Avenue in the Bronx, § 87(2)(b) s vehicle was parked in the middle of the one-way street, which inhibited PO Sammarco from driving past the vehicle as there was not enough room to do so. PO Sammarco had the unmarked Ford Focus’ lights and sirens on, but § 87(2)(b) did not move his vehicle. After a couple minutes, § 87(2)(b) moved his vehicle to the left-side of the one-way street. PO Sammarco then exited the unmarked Ford Focus and approached § 87(2)(b) s driver-side window. After briefly speaking with § 87(2)(b) PO Sammarco returned to the unmarked Ford Focus and drove away. PO Mockel stated that he could not hear PO Sammarco’s conversation with § 87(2)(b) and he could not recall if he or PO Timarchi ever exited the unmarked Ford Focus at the time. He could not recall if PO Sammarco was arguing with § 87(2)(b) did not recall observing PO Sammarco approach § 87(2)(b) s vehicle more than once, did not recall if PO Sammarco took § 87(2)(b) s driver’s license, and denied observing PO Sammarco throw any objects out of the unmarked Ford Focus’ window. PO Timarchi did not recall this incident and did recall working on the incident date.

According to Police Department v. Jean Mary, OATH Index No. 129/01 (2000), the use of profanity by an officer may be permissible if it used to gain a civilian’s cooperation, but it constitutes misconduct if it is used only in retaliation to a civilian’s discourteous remarks (see Board Review 18). NYPD Patrol Guide Procedure 203-09 mandates officers to be courteous and respectful during public contact (see Board Review 19).

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

[REDACTED]

§ 87(2)(g)

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Pod: 15

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date